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2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**

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6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.

9 GEORGE MCKENNA,

10 Defendant.
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2:12-cr-00082-APG-VCF

ORDER

[Defendant George McKenna's Motion for Release to Attend the Funeral of his minor child or, in the Alternative, for the US Marshals Office of Transport George McKenna to the Funeral (#372)]

12 Before the Court is Defendant George McKenna's Motion for Release to Attend the Funeral of
13 his minor child or, in the Alternative, for the US Marshals Office of Transport George McKenna to the
14 Funeral (#372).

15 **Relevant Background:**

16 Defendant made his initial appearance/arraignment and plea on April 24, 2012. (#49).
17 Defendant pleaded not guilty to counts 1 through 3. *Id.* On September 13, 2012, Defendant pleaded
18 guilty to counts 1 and 3 of the Superseding indictment and the Court accepted his guilty plea. (#190).
19 Defendant was remanded to custody. *Id.* A sentencing and disposition hearing was held on March 25,
20 2013 (#330) and judgment was entered on March 27, 2013 (#333). He was sentenced to 46 months
21 incarceration for his Conspiracy conviction, to run consecutively to the 24-month term for his
22 Aggravated Identity Theft conviction, for a total prison term of 70 months. *Id.* He is currently in the
23 Pahrump jail facility awaiting his facility designation from the Bureau of Prisons.

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1 **Defendant's Position:**

2 On June 26, 2013, Defendant filed a Motion for Release to Attend the Funeral of His Minor
3 Child or, in the Alternative, for the US Marshals Office to Transport George McKenna to the Funeral
4 (#372). Defendant's son passed away as a result of an automobile collision. Defendant is requesting
5 release for the purpose of attending his son's funeral in California. *Id.* If the Court is unwilling to
6 release him to attend services, Defendant requests the United States Marshals to transport him to attend
7 funeral services. *Id.*

8 **Government's Response Opposition Defendant's Motion for Release or Marshal Transport to**
9 **Funeral:**

10 The Government filed a Response Opposing Defendant's Motion for Release or Marshal
11 Transport to Funeral (Doc. No. 372) on June 28, 2013. (#375). Defendant has an extensive criminal
12 history. "His criminal history shows numerous failures to appear, failures to comply with Courts'
13 orders, and numerous instances where supervision was revoked in favor of jail time." *Id.* On July 13,
14 2012, Defendant failed to self-surrender to serve his twenty-four (24) month California state prison
15 sentence. *Id.* The Government states that, [w]hile on the run in "escape" status, [D]efendant McKenna
16 left California and traveled to Nevada, where he personally committed criminal acts in furtherance of
17 this federal conspiracy case in August 2011." *Id.* Also, Defendant has a history of controlled substance
18 abuse and has stated to the United States Probation Office that he cannot think clearly when under the
19 influence of controlled substances. In the past, deaths in his family have negatively weakened his ability
20 to resist using controlled substances. The recent death of his son may do the same and weaken his
21 ability to resist using controlled substances. *Id.*

22 The Government objects to ordering the United States Marshals Service to transport Defendant
23 to the funeral. Defendant has known California gang ties and there are safety concerns to the Defendant
24 and the transporting deputy. The Government asserts that, "a co-defendant was recently assaulted in
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1 connection with her membership in the criminal organization.” *Id.* The safety of the Defendant and the
2 Marshal may be compromised by taking the Defendant to California for the funeral. *Id.*

3 On July 3, 2013, Defendant filed a Reply in support of his instant motion. (#376). The funeral is
4 scheduled for July 6, 2013. Defendant argues that, “[t]here is nothing to suggest that allowing the U.S.
5 Marshals Service to transport Defendant George McKenna would place them in any danger” as
6 Defendant is does not pose a danger to anyone and he is no longer gang involved. *Id.*

7 **Discussion:**

8 The Court recognize that Defendant has suffered a great loss with the death of his son. In
9 considering his past criminal history, however, Defendant has failed to comply with Court orders
10 numerous times. He has failed to self-surrender and has committed criminal acts while on the run.
11 Given his prior failure to self-surrender, the Court must consider that there is an increased likelihood
12 that Defendant may escape while temporary released to attend the funeral. Defendant has known
13 California gang ties and there are safety concerns to the Defendant and the transporting deputy. The
14 Government asserts in their Opposition that, “a co-defendant was recently assaulted in connection with
15 her membership in the criminal organization.” *Id.* This demonstrates a serious risk of danger for the
16 Defendant and the transporting Marshal.

17 IT IS HEREBY ORDERED that Defendant George McKenna’s Motion for Release to Attend
18 the Funeral of his minor child or, in the Alternative, for the US Marshals Office of Transport George
19 McKenna to the Funeral (#372) is DENIED.

20 DATED this 3rd day of July, 2013.



21 CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
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